

## 114.1 CMR: DIVISION OF HEALTH CARE FINANCE AND POLICY

### **114.1 CMR 29.00: RATE AND CHARGE DETERMINATION FOR CERTAIN INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED OPERATED BY THE DEPARTMENT OF MENTAL RETARDATION**

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#### 29.01: General Provisions

(1) Scope, Purpose and Effective Date. 114.1 CMR 29.00 governs the rates of payment for all care and services rendered to publicly-assisted patients by Intermediate Care Facilities for the Mentally Retarded (ICFMR) operated by the Department of Mental Retardation. 114.1 CMR 29.00 governs charges to the general public for health care and services provided by the Intermediate Care Facilities for the Mentally Retarded operated by the Department of Mental Retardation. 114.1 CMR 29.00 shall be effective as of July 1, 2004.

(2) Disclaimer and Authorization of Services. 114.1 CMR 29.00 is neither authorization for nor approval of the program of health care and services included within 114.1 CMR 29.00. Governmental units that purchase health care and services under 114.1 CMR 29.00 are responsible for the definition, authorization, and approval of programs of care and services provided by health care facilities subject to 114.1 CMR 29.00.

(3) Authority. 114.1 CMR 29.00 is adopted pursuant to M.G.L. c.118G.

#### 29.02: Definitions

As used in 114.1 CMR 29.00, unless the context requires otherwise, terms shall have the following meanings:

Base Year. The fiscal year two years prior to the rate year.

DHCFP-403 A. The cost report for ICFMR's beginning with fiscal year 1996.

Division. The Division of Health Care Finance and Policy established under M.G.L. c.118G.

Final Inpatient Per Diem Rate. The all-inclusive inpatient rate based upon the costs from the rate year filing of the DHCFP-403A reports. This final rate is set once the Division screen is complete, thereby replacing the initial rate.

Governmental Unit. The Commonwealth of Massachusetts and any department, agency, board, commission, division, or political subdivision of the Commonwealth.

Initial Per Diem Rate. The temporary all-inclusive inpatient rate based upon the cost from the base year filing of the DHCFP-403A reports, inflated to the rate year.

Inpatient Day. HURM standard unit of measure to report care of patients admitted to a hospital including the day of admission, but not the day of discharge. If both admission and discharge occurs on the same day, the day is considered a day of admission and counts as one inpatient day.

Intermediate Care Facility for the Mentally Retarded (ICFMR). An ICFMR facility is an institution whether operated for profit or charity, advertised, announced, established or maintained for the purpose of providing diagnostic, medical, surgical, or restorative treatment for patients within or centrally based in an institution and licensed as a

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hospital by the Department of Public Health under M.G.L. c.111, §51 and any hospital licensed under M.G.L. c.19, §29.

Overhead. Overhead includes expenses for depreciation, leases, long term interest, amortized bond issue costs, fringe benefits, administration, plant maintenance and repairs, plant operations, security, licenses, laundry, housekeeping, cafeteria, dietary, nursing administration, inservice education, central service and supplies, medical records, medical services, social services and other overhead quality assurance.

Publicly Aided Patient. A person who receives health care and services for which a governmental unit is in whole or part liable under a statutory program of public assistance.

Rate Year. The rate year is the 12 month period, July 1 through June 30, to which the related rate applies.

### 29.03: Reporting Requirements

- (1) Required Reports.
  - (a) On an annual basis, each ICFMR shall file with the Division two hard copies and one disk copy of the DHC FP-403A, within 120 days of the close of its fiscal year. The DHC FP-403A is to be completed in accordance with the instructions set forth therein and pursuant to requirements of Administrative Bulletin 97-1 and any pertinent administrative bulletins issued by the Division pursuant to 114.1 CMR 29.09.
  - (b) Each ICFMR shall file, when required, trial balances and supplemental financial information to support the facility's DHC FP-403A filing.
  - (c) Each ICFMR shall make available all books and records relating to its operation for audit and/or screening, if requested by the Division.
  - (d) The CEO or CFO of an ICFMR shall certify all reports, schedules, reporting forms, budget information, books and records under pains and penalties of perjury as true, correct and accurate.
  - (e) The Division may, from time to time, require ICFMRs to submit additional data and documentation needed for calculation of Medicaid rates of payment or charges.
  - (f) The Division may, for cause documented in writing, extend the filing date for the submission of reports, schedules, reporting forms, budget information, books and records.
- (2) Penalties. If the ICFMR does not submit documents required pursuant to 114.1 CMR 29.03, in a timely fashion, as described above, the Division may determine an effective date for the rates determined under 114.1 CMR 29.00 which reflects the time lost for late or inadequate filing.

### 29.04: General Payment Provisions.

- (1) Reimbursement as Full Payment. Each ICFMR which provides services to publicly-aided patients shall, as a condition of receipt of payment, accept reimbursement at rates established by the Division as full payment and discharge of all obligations of such individuals. There shall be no duplication or supplementation of payment for services provided to publicly-assisted patients.
- (2) Reimbursement Limitation. Reimbursement determined under 114.1 CMR 29.00 for publicly assisted patients shall not exceed that reimbursement which would result from application of the Principles of Reimbursement of Provider costs established under 42 U.S.C. §§1395 et seq., the Medicare Act.
- (3) Allowable Costs.
  - (a) Pursuant to the requirements and rate and charge determination formulas of 114.1 CMR 29.00, ICFMRs will be reimbursed for allowable costs. These costs must be reasonable costs and must be directly related to health care and services.
  - (b) Except as otherwise required in 114.1 CMR 29.00 and the instructions to the DHC FP-403A, allowable costs for inpatient care and services shall be determined in accordance with the Principles of Reimbursement for Provider Costs under 42 U.S.C. §§1395 et seq. as set forth in 42 CFR 413, et seq. and the Provider Reimbursement Manual.

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- (c) Depreciation shall be an allowable cost provided that it is based on historical cost and is calculated by the straight line method. The useful life of assets shall be determined in accordance with the most recent version of the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets.
- (d) Costs for leased facilities and fixed equipment shall be an allowable cost to the extent that such costs do not exceed the allowable cost which would have been recognized if the ICFMR had purchased the equipment or facilities and to the extent that such costs do not exceed rental charges of comparable equipment or facilities.
- (e) Costs for equipment and facilities leased under contractual provisions which provide a purchase option at the end of the lease term without more than nominal payment will not be allowed. Depreciation will be allowed pursuant to 114.1 CMR 29.04(3)(c).
- (f) Interest expense in excess of interest income shall be an allowable cost.
- (g) Administrative and general cost in excess of miscellaneous income shall be an allowable cost.
- (h) Overhead expenses shall be allocated to non-patient services.
- (i) Costs for consultants shall be amortized over the useful life of the asset that consultant work is related to, and the amortized cost shall be an allowable cost as set forth in 114.1 CMR 4.02(2).
- (j) Payments to professional organizations, trade associations and the like, and comprehensive health planning agencies shall be allowed as set forth in 114.1 CMR 4.02(6).
- (k) Limitation of basis for depreciation, interest, and equity. Where there has been a change of ownership on or after July 18, 1984, the allowable basis of fixed assets shall be the lower of the acquisition cost or the basis allowed the immediate prior owner reduced by the amount of actual depreciation paid to the prior owner of the facility during all years in which the prior owner participated in the Medicaid program.

### (4) Excluded Costs. The following costs are excluded under 114.1 CMR 29.00.

- (a) Costs for whole blood, appliances, and patient take-home items.
- (b) Bad debts, charity, courtesy allowances, and free care to medically indigent persons.
- (c) Costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which payment has previously been made by Medicaid.

## 29.05: Determination of Inpatient Rate

(1) General. The Division will determine an Inpatient Rate for each ICFMR. The Division will establish an Initial Per Diem Rate using a base year DHCFF-403A cost report inflated to rate year pursuant to 114.1 CMR 29.05(3) and a Final Per Diem Rate using the rate year DHCFF-403A cost report.

### (2). Calculation of the Inpatient Per Diem.

- (a) Allowable Total Patient Care Costs. Allowable Total Patient Care Costs are the sum of the ICFMR's Total Inpatient Routine and Ancillary Costs plus Overhead costs associated with inpatient care as reviewed and adjusted pursuant to 114.1 CMR 29.04.
- (b) The Division will divide the Allowable Total Patient Care Costs pursuant to 114.1 CMR 29.05(2)(a) by Total Patient Days.

(3). Cost Adjustment Factor. To calculate the Initial Inpatient Per Diem rate, the Division will adjust the Allowable Base Year Total Patient Care Costs pursuant to 114.1 CMR 25.05(2)(a) to rate year inpatient care cost using a composite index comprised of two cost categories: labor and non-labor. The Division will weight these categories according to the weights used by the Health Care Financing Administration for PPS-exempt hospitals. The Division will use the Massachusetts Consumer Price Index inflation proxy for the labor cost category and the HCFA market basket for hospitals for the non-labor cost category.

## 29.06: Administrative Adjustment to Inpatient Per Diem Rate

(1) Timing. An ICFMR may apply for a discretionary administrative adjustment to its Inpatient Per Diem Rate based upon the grounds set forth below. Any such application, except for those related to Governmental Requirements and Disaster Losses must be filed within 90 days of initial rate approval to receive consideration. Applications for Governmental Requirements and Disaster Losses must be filed within 60 days from the date the costs were incurred. Adjustments granted for Mechanical Error shall be effective on the date the rate containing the error went into effect.

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Adjustments granted for Governmental Requirements and Disaster Losses shall be effective on the date the costs were incurred. All other adjustments shall be effective on the later of 1) the beginning of the quarter (July 1, October 1, January 1, April 1) in which a complete application is received or 2) the date the costs will be incurred.

- (2) Qualifications. In order to qualify for an administrative adjustment, the ICFMR must demonstrate the following:
- (a) the timing and amount of the increase in costs is reasonably certain;
  - (b) the category of cost for which an administrative adjustment is sought is not included in the base year cost;
  - (c) the amount requested is greater than 1% of the ICFMR's total patient care costs. Multiple unrelated requests for an administrative adjustment may be grouped together to meet the materiality limit; however, each individual item must equal or exceed .10% of total patient care costs.
  - (d) the adjustment is necessary for the appropriate provision of services. The Division will consider a cost "necessary" only if it can be demonstrated to the satisfaction of the Division that such costs cannot be met through efficient management and economic operation at the existing reimbursable cost level.
- (3) Documentation. Requests for an administrative adjustment shall be accompanied by full and complete documentation of the request. The Division may deny any request for an administrative adjustment for which documentation is not submitted.
- (4) Disbursement. An ICFMR must begin to expend the costs for which it has received approval within 60 days of the effective date of the administrative adjustment. An interim financial report demonstrating these expenditures must be submitted within 90 days of the effective date of the administrative adjustment. Failure to submit this will result in the approved amount being deducted from current rate year rates. If the ICFMR does not begin to expend such costs within 60 days, the ICFMR must notify the Division that approved amounts were not expended. The approved amount will then be deducted from current rate year rates.
- (5) Limitations. The following are grounds for an administrative adjustment provided the criteria set forth in 114.1 CMR 29.06(2) are met:
- (a) Mechanical Error. There has been a mechanical error in calculating the Inpatient Per Diem Rate approved under 114.1 CMR 29.00.
  - (b) Governmental Requirements. Statutory or regulatory requirements of a governmental unit or federal government have generated a substantial increase in allowable costs as adjusted pursuant to 114.1 CMR 29.05. An increase in existing governmental requirements shall not be considered to be a new governmental requirement. Documentation shall include written certification or a copy of an official notice from the governmental unit detailing the new requirements imposed on the ICFMR and the verification of the costs.
  - (c) Disaster Losses. The ICFMR has incurred disaster losses in excess of insurance or extraordinary costs related to disaster losses not covered by outside sources. Documentation shall include verification of loss or extraordinary cost and the insurance or outside source payment. If, however, the loss or extraordinary cost is caused by a facility being inadequately insured according to the standards of the ICFMR industry, or through negligence on the part of facility management, such losses or costs shall not be approved.
  - (d) DON Operating Costs. An ICFMR has incurred or expects to incur an increase in operating costs associated with a major capital expenditure or substantial change in services which is subject to and has received a determination of need pursuant to M.G.L. c. 111, §§25B - 25G. In its application, the ICFMR must segregate the increased costs from other allowed operating costs and must demonstrate that the increased costs requested are reasonable. If an approved DON results in increased patient days, those increased patient days will be added to the Total Patient Days used in the Inpatient Rate.
- (6) Submission for Administrative Adjustment. An application for administrative adjustment shall be made to the Commissioner of the Division in writing and shall contain the following:
- (a) The name and address of the ICFMR.
  - (b) The approved Inpatient Rate and charge to be reviewed and the rate or charge sought by administrative adjustment.
  - (c) A clear, concise, statement of the reasons for the application for administrative adjustment.
  - (d) A detailed statement of financial, statistical, and related information in support of the application.
  - (e) All information and documentation required under 114.1 CMR 29.03.
  - (f) A citation to any statutory, regulatory, or contractual requirement in support of the application.

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- (g) Such other books, records, and information as may be required by the Division.
- (h) A certification by the chief executive officer or financial officer of the ICFMR that the application and all information, reports, schedules, budgets, books, and records submitted are true, correct, and accurate.

- (7) Administrative Adjustment Decision. Within sixty (60) days from receipt of a complete and satisfactory application for administrative adjustment the Division will render a decision. A written statement of reasons for the decision will be provided upon request.

### 29.07: Administrative Review

- (1) Purpose of Administrative Review. To assure that an ICFMR facility's rates are in continuing compliance with this part, the Division may, at any time and upon its own motion, review an approved rate upon notice to the facility.
- (2) Administrative Review of Transfers of Cost. Where an ICFMR has reduced costs or increased costs by transfer of those costs to other persons or entities which provide health care and services, the Division may modify the Inpatient Rate to reflect the change in costs. In order to give effect to a transfer of cost each ICFMR must file information concerning cost, volume and revenue 30 days prior to implementation of a proposed transfer of cost, and must submit any additional information regarding the transfer of cost which the Division may require.
- (3) Administrative Review and Decision. Upon notice of administrative review, the ICFMR shall submit such books, records, documentation, and information as the Division may require. After review, the Division will render a written decision and statement of reasons for its decision.

### 29.08: Appeal

An ICFMR which is aggrieved by any action or failure to act under 114.1 CMR 29.00 may file an appeal within 30 days to the Division of Administrative Law Appeals pursuant to the requirements of M.G.L. c. 118G and M.G.L. c. 7, s. 4H. The pendency of an appeal does not limit the Division's right to undertake administrative review under 114.1 CMR 29.00.

### 29.09: Administrative Information Bulletins

The Division may, from time to time, issue administrative information bulletins to clarify its policy upon and understanding of substantive provisions of 114.1 CMR 29.00. In addition, the Division may issue administrative information bulletins which specify the information and documentation necessary to implement 114.1 CMR 29.00.

### 29.10 Severability

The provisions of 114.1 CMR 29.00 are hereby declared to be severable, and if such provisions or the application of such provision to any person or any circumstances shall be held to be invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 114.1 CMR 29.00 or the application of such provisions to hospitals or circumstances other than those held invalid.

## REGULATORY AUTHORITY

114.1 CMR 29.00: M.G.L.c.118G.